IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6897 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHASKARBHAI PRABHUDAS PATEL

Versus

DABHOI DEVELOPMENT AUTHORITY

Appearance:

1. Special Civil Application No. 6897 of 2004

MR TARESH J BHATTJI for Petitioner No. 1-2

MR RM CHHAYA for Respondent No. 1

Mr. KD Pandya, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 19/07/2004

ORAL JUDGEMENT

Rule. Shri RM Chhaya, learned advocate waives service of Rule on behalf of respondent No.1 and Shri KD Pandya, learned AGP waives service of Rule on behalf of respondent No.2.

2. In the present Special Civil Application under Article 226 of the Constitution of India the petitioners have prayed for implementation of the Town Planning Scheme Dabhoi-I and for an appropriate writ, direction or order directing the respondents to hand over actual, physical possession of Final Plot allotted to the petitionerss as per redistribution statement under the Final Town Planning Schems. The main grievance raised in the present Special Civil Application is with regard to Final Plots No. 92, 96 and 98 which are allotted to the petitioners under the Town Planning Scheme which has become final.

3. Shri Bhattji, learned advocate appearing for the petitioners has submitted that so far as final plot No. 96 is concerned, the petitioners are in fact allotted less land than what they were required to be allotted under the Town Planning Scheme. So far as Final Plots No. 92 and 98 are concerned, Shri Bhattji has submitted that till date the petitioners are not allotted and/or given possession of the aforesaid final plots and the Town Planning scheme which has become final is not implemented.

4. In response to the notice issued by this Court, Shri RM Chhaya, learned advocate appears for the Area Development Authority, Dabhoi. An affidavit-in-reply has also been filed on behalf of the respondent No.1. Shri Chhaya has submitted that so far as Final Plot No. 96 is concerned, possession of the said final plot is already handed over to the petitioners after necessary measurement on 10th May 1999 and therefore nothing further requires to be done. Shri Chhaya has further submitted that so far as final plots No. 92 and 98 are concerned the respondent No.1. authority is ready and willing to implement the scheme in accordance with law and they have already given notices for demarcation and measurement in the year 2003.

5. Heard the learned advocates appearing for the parties. So far as final plot No. 96 is concerned, as stated in the affidavit-in-reply the possession was already handed over on 10th May 1999. However, Shri Bhattji has submitted that there is a dispute with regard to measurement, as according to him less land is given to the petitioners, but according to Shri Chhaya, the entire final plot No. 96 is handed over to the petitioners under the Town Planning Scheme. This is a disputed question of fact which is not to be decided in a petition filed under Article 226 of the Constitution of India. However, it will be open to the petitioners to approach

the respondent No.1 and as when the respondent No.1 is approached the respondent No.1 may consider the same in accordance with law. So far as final plots No. 92 and 98 are concerned, the respondent No.1 is directed to implement the Town Planning Scheme which has become final and hand over demarcated, actual, physical possession of the land as per the redistribution statement with regard to final plots No. 92 and 98 to the petitioners within a period of eight weeks from the date of receipt of this order subject to cooperation on the part of the petitioners. The petition is partly allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.

rmr. [M.R. Shah, J.]